

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MATTHEW G. SILVA,

Plaintiff,

vs.

MAGGIE MILLER-STOUT, RISA
KLEMME, UNKNOWN MAILROOM
EMPLOYEE, and AHCC,

Defendants.

NO. CV-07-210-RHW

ORDER DENYING *IN FORMA PAUPERIS*
STATUS AND DISMISSING ACTION

By Order filed August 23, 2007, the Court directed Mr. Silva to show cause why this case should not be dismissed under 28 U.S.C. § 1915(g), as Mr. Silva has had at least four cases dismissed as frivolous or for failure to state a claim. Plaintiff has submitted an "Offer of Proof" (Ct. Rec. 7), in which he asks this Court to take judicial notice of the fact two of these cases, *Silva v. Bush, et al.*, CV-06-984-JLR (Western District of Washington, dismissed April 16, 2007), and *Silva v. Goddard*, CV-06-2289-JAT/ECV (District of Arizona, Phoenix, dismissed March 27, 2007) are currently on appeal.

The Prison Litigation Reform Act of 1995, Pub.L. No. 104-143, 110 Stat. 1321 (Apr. 26, 1996) amends the *in forma pauperis* statute, 28 U.S.C. § 1915. Section 1915(g) provides as follows:

In no event shall a prisoner bring a civil action or appeal a

1 judgment in a civil action or proceed under this section if the
2 prisoner has, on 3 or more prior occasions, while incarcerated or
3 detained in any facility, brought an action or appeal in a court
4 of the United States that was dismissed on the grounds that it is
frivolous, malicious, or fails to state a claim on which relief
may be granted unless the prisoner is under imminent danger of
serious physical injury.

5 28 U.S.C. § 1915(g).

6 At this time, and until the Ninth Circuit affirmatively overrules
7 the district court decisions in Plaintiff's two cases, those cases
8 have been dismissed for failure to state a claim upon which relief may
9 be granted. Therefore, they count as dismissals under 28 U.S.C. §
10 1915(g), and preclude Mr. Silva from proceeding before this Court *in*
11 *forma pauperis*. He has made no showing he is under imminent danger of
12 serious physical injury.

13 Accordingly, **IT IS ORDERED** Plaintiff's application to proceed *in*
14 *forma pauperis* is **DENIED** and this case is **DISMISSED** without prejudice
15 pursuant to 28 U.S.C. § 1915(g).

16 **IT IS SO ORDERED.** The District Court Executive is directed to
17 enter this Order, enter judgment, forward a copy to Plaintiff and
18 close the file.

19 **DATED** this 18th day of October 2007.

20 S/ Robert H. Whaley

21 ROBERT H. WHALEY
22 CHIEF UNITED STATES DISTRICT JUDGE
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